



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON RULES, FINANCE AND INTERGOVERNMENTAL RELATIONS

DATE: June 27, 2007

REPORT NO.: CC-07-01

SUBJECT: FOLLOWUP REPORT: MAIL-ONLY BALLOT ELECTION ISSUES OF
VOTER TURNOUT AND FRAUD

INTRODUCTION

On July 26, 2006, the Elections Task Force presented its report on mail-only ballot elections to the Rules Committee, which then directed that the City Clerk provide additional information on voter turnout and fraud issues related to mail-only elections. This is the Clerk's response.

IMPACT OF MAIL-BALLOT ELECTIONS ON VOTER TURNOUT

In a mail-ballot election, every voter in the jurisdiction is provided with an absentee ballot. Local jurisdictions in Oregon have conducted all-mail elections since 1981; in 1998, 67% of Oregon voters approved voting by mail (VBM) for all elections, including those at the federal level. Much of the research on mail-ballot elections focuses on Oregon's experience.

Oregon's election officials and voters alike appear to view voting by mail as a success, and the Secretary of State's Office touts it as a way to increase voter participation.

Mail-ballot elections may be one factor making voter turnout in Oregon consistently higher than the average national voter turnout. For example, in the U. S. 2004 presidential general election, the nation experienced a turnout of 58.4% of the voting-age-eligible population, while Oregon had a record 70.6% turnout. The state's turnout of registered voters for that election was 86.48%, compared to California's 57.03% and to San Diego County's 58.23%. The City of San Diego's ballot featured run-off elections for the offices of Mayor, City Attorney, and District 1 Councilmember, in addition to seven propositions; citywide turnout was 73.93%.

Mixed Results

Evidence is mixed on how significant an impact voting by mail may have on voter turnout. It appears that mail-ballot elections do increase turnout, but that the increase is generally noticeable only in low-profile contests such as local elections and primaries. In fact, a recent study (Kousser and Mullin) finds indications that voting by mail actually may have a small *negative* impact on participation in general elections. However, that study also shows that voting by mail “brings a clear and consistent increase in turnout in municipal special elections,” potentially as high as eight percentage points.

It is commonly accepted that voter turnout for any given election is the result of a number of factors, including which offices and issues are on the ballot, and how high-profile those offices and issues are.

The 2000 election was the first presidential election held entirely by mail in Oregon, and turnout increased in that election by 8.5% over the 1996 turnout. The 2001 study “Who Votes by Mail?” (Berinsky et al) posited that not all of the increase was a result of the switch in voting techniques, as the ballot had such a large number of referenda on it that the ballot ran to two punch-cards per voter for the first time.

Mail-Ballot Elections Do Not Appear to Increase Registration

Additionally, data indicates that voting by mail’s increase in voter turnout results from retaining existing voters rather than recruiting new voters into the system. The purpose of mail-ballot elections is not to increase voter registration, but to make it easier for those who are registered to vote.

In fact, mail-ballot elections do *not* appear to draw non-voters into the electorate—if there is any impact on a voter’s decision to register, that impact appears to occur at the first, and only the first, opportunity to vote by mail. However, mail-ballot elections *do* appear to retain voters by removing obstacles such as illness, traffic or busy-ness, which might reduce one’s likelihood of voting on a given election day.

This conclusion is supported by a 2005 study from the University of Oregon, which found that certain groups of individuals—women, young people (26-38 years of age), and the disabled and retirees—found mail-ballot elections to be more convenient than polling-place elections held on a single election day. In fact, using data from the 2003 Oregon Annual Social Indicators Survey, the UO study found overwhelming *support* for vote-by-mail (compared to polling-place elections); the data indicates that the preference is consistent across all demographic and attitudinal subcategories. (We note that in November, 2006, Arizonans voted down a proposition which would have established mail-ballot elections in that state, by a 71.06% [no] to 28.94% [yes] margin.)

Mail-Ballot Elections Have Questionable Impact on Minority Voter Turnout

To date, no studies we have found have definitively shown that mail-ballot elections have either a significant positive or a significant negative impact specific to minority voter

turnout. It is worth mentioning again that allowing mail-only elections is *not* a tool for increasing voter registration.

Voting behavior expert Paul Gronke (Reed College, Oregon) noted in 2006 that mail-only elections do not appear to make voting sufficiently convenient to overcome barriers to higher turnout in minority and disempowered communities.

Gronke has interpreted data as indicating that few, if any, racial differences appear in turnout for early or absentee voting. However, in 2007, the University of California, San Diego's Dr. Thad Kousser anecdotally interpreted Berinsky et al to mean that the problem of under-representation is increased, because turnout rates are increased for those who "always used to turn out" but not for those who had always been under-represented.

The report of the 2001 National Commission on Election Reform found that in 1996, "use of absentee ballots varies by race. Blacks are only half as likely as whites to vote absentee." Gronke attributes this to the fact that while some states had begun relaxing absentee ballot requirements by 1996, states with large African-American populations, particularly in the South and Northeast U.S., still had very restrictive rules.

The Brennan Center for Justice at NYU School of Law noted in 2005 that there may be disproportionate *information* regarding the process for absentee balloting among different racial communities. Individuals who voted absentee were disproportionately white nationwide in 1996, and the Brennan Center reports that no evidence exists to indicate that that disproportion has changed, additionally noting that legal opportunity to vote by absentee ballot does not necessarily translate into preference or habit. The Brennan Center admits, however, that it is unaware of any studies examining the racial impact of reforms such as relaxing absentee ballot requirements.

That has been the difficulty in determining the impact of mail-only elections on minority voter turnout: the lack of definitive data.

However, in the 2005 University of Oregon study, some 81.5% of white respondents reported *preference* for voting by mail, while 79.3% of non-white respondents reported the same preference. Nearly two-thirds of all respondents self-reported that the frequency of their voting was "about the same" (white=66.8%; non-white=66.1%), and approximately 28% of all respondents self-reported that they voted more often using the mail-ballot system (white=29.6%; non-white=27.1%). A small portion of respondents self-reported that they voted less often under the system (white=3.6%; non-white=6.8%).

We note that post-election surveys are often exit polls or random digit dialing (RDD) telephone polls where respondents are assumed to provide correct and complete information. It is commonly accepted that registered voters tend to over-report their voting activity; i.e., in post-election surveys, an individual may report that he or she participated in the election, when that is not, in fact, the case.

It is also important to mention that neither Oregon nor California collect race and ethnicity data on their voter registration forms, although "ethnic background" is included on California's form as an optional item.

In California, voting by mail is garnering increasing attention at the state level. Introduced earlier this year, Assembly Bill 1654 (Huffman) would have allowed any local, special, primary, or general election to be conducted as an all-mail ballot election subject to certain conditions. The bill was ultimately not heard in committee, as the hearing was cancelled at the author's request. However, at the time of its introduction, the bill was supported by such as the City Clerks Association of California and the California State Association of Counties, the latter of which noted its belief that all-mail balloting would increase voter participation.

Opponents to the bill include the Mexican American Legal Defense and Educational Fund (MALDEF) and the Asian Pacific American Legal Center (APALC). MALDEF found data that it believes supports the concept that minority and low-income voters prefer to cast their votes at a polling place, in lieu of absentee voting. APALC expressed concern that providing language assistance to limited English proficient voters would be compromised by the implementation of mail-only elections. APALC was also concerned that voters from populations with high rates of mobility would not receive their absentee ballots in the mail.

POTENTIAL FOR VOTER FRAUD IN MAIL-BALLOT ELECTIONS

Finding agreement on the prevalence of fraud in absentee balloting or mail-only elections is also difficult. As recently as this year, there have been conflicting arguments on the issue.

In early 1998, the Florida Department of Law Enforcement (FDLE) issued a report with observations on actual and potential voter fraud issues in that state. While not principally responsible for monitoring Florida's election issues, the FDLE had recently conducted "criminal investigations of specific allegations of election fraud or other misconduct" and had subsequently identified what the Department considered to be basic trends in election fraud in the state and nationwide.

Pertinent to absentee ballots, the FDLE found three areas that it considered "ripe" for potential abuse:

- a) Using absentee ballots improperly. The FDLE noted that relaxing voter registration requirements had the potential for increasing fraudulent registration. Once registered, a voter has the opportunity to vote absentee in each future election, with no "in-person, at-the-polls" accountability. The FDLE concluded that absentee ballots were the "tool of choice" for individuals seeking to commit voter fraud.

However, in California, voter fraud is punishable as a felony. Recent discussions with the San Diego County Registrar of Voters have made us aware that voter identification is more closely scrutinized in a mail-ballot election than in a standard election. Voters at local polling places are asked for identification only under specific, limited circumstances, whereas returned mail ballots are subject to both a signature identification check and a residential address check.

Berinsky et al noted that the 2000 presidential election in Oregon resulted in no significant charges of fraud or corruption, reflecting no change from other recent Oregon elections. The 2005 Carter-Baker study ("Ballot Integrity and Voting by

Mail: The Oregon Experience”) concurs that Oregon has been “relatively free” from voter fraud controversies. It is possible, then, that Oregon’s voting system has deterred voter fraud in the state, as it incorporates a variety of security measures, including a signature authentication system, in addition to substantial punishment for those convicted of engaging in voter fraud.

- b) Illegally or improperly “assisting” others to vote their absentee ballot. The FDLE also expressed its concern that absentee ballots could be fraudulently used without the actual voter even knowing it. Those with access to the “ill or infirm or those who do not have the ability to resist the influence of another” could have a tremendous opportunity to mark or force to mark the absentee ballot in a way that differs from how the actual voter wants or expects or believes it to be marked. The same opportunity exists with voters “whose interest in voting is marginal or non-existent.”
- c) Vote-buying. The FDLE contends that offering payment or some sort of reward for marking any ballot a certain way is a problem in any election, and that absentee ballots make vote-buying easier, as the buyer can physically see the ballot being marked.

We note additionally that there is the perception that ballots mailed to voters by the election official may be intercepted and voted by someone other than the voters for whom they were intended. However, the Carter-Baker study found that, in Oregon, the cooperation of the U. S. Postal Service helped prevent ballots from being mis-delivered, and that this was a factor in reducing the risk of large-scale attempts to cast fraudulent ballots.

We understand also that some voters may not wish to return by mail a ballot on which their signatures are clearly evident. The Elections Task Force believed that this concern could be addressed by establishing one or more drop-off locations for ballots. However, the Carter-Baker study found a degree of risk for election fraud in such ‘non-mail’ return of ballots. Oregon voters use official drop-sites, including drop boxes; additionally, a voter’s ballot may be picked up at the voter’s home by volunteers, who are often sponsored by political groups or by elected officials as a form of constituent service. The Carter-Baker study found no documented cases in which such ballots were tampered with or destroyed, but notes that election officials cannot confirm receipt of every ballot given to anyone other than an authorized election official.

How Prevalent Is Voter Fraud?

In late 2006, the U. S. Election Assistance Commission (Commission) published its report “Election Crimes: An Initial Review and Recommendations for Future Study,” phase one of what the Commission sees as a comprehensive study of voting fraud and voter intimidation, among other election-related issues. We must note that the Commission’s report has generated a degree of controversy.

During its research, the Commission found no studies conducted in the past based on “a comprehensive, nationwide study, survey or review of all allegations, prosecutions or

convictions of state or federal crimes related to voting fraud or voter intimidation in the United States.” Rather, reports tended to be limited to small numbers of case studies or instances of alleged voting fraud or voter intimidation. The Commission also noted that, in its research, it found “no consensus on the pervasiveness of voting fraud and voter intimidation,” but noted “the pervasiveness of *complaints* (emphasis added) of fraud and intimidation throughout the country.”

In early 2007, representatives of The Brennan Center expressed their belief that “evidence of actual fraud by individual voters is painfully skimpy,” although they were not specifically addressing issues directly related to mail-ballot elections. Their conclusion was echoed in Project Vote’s 2007 study, “The Politics of Voter Fraud,” which reported, “At the federal level, records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible.”

We take this opportunity to point out that the Commission’s work addressed elections in general, not mail-ballot elections or absentee ballots specifically. However, the Commission noted that interviews and conclusions gathered from books, articles and other studies indicated that its sources “largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote-buying and voter registration fraud.” Consequently, the Commission recommended a study specific to absentee ballot fraud; the study should consider how absentee ballot fraud schemes are conducted, and propose methods for preventing such fraud.

Further, we note that there have been a number of recent disputed elections and documented cases of absentee ballot fraud. Law professor Richard L. Hasen (Loyola Law School, Los Angeles) notes that “(m)ost of the documented cases of voting fraud in the United States in recent years involve absentee ballots.” In 1998, the courts threw out all of the 4,740 absentee ballots cast in the 1998 Miami mayoral election, and overturned the original election results. Absentee ballots were cited as a source of some of the problems in the November 2004 Washington gubernatorial election. The Carter-Baker study notes other recent allegations of election fraud that involve absentee ballots in Colorado, Michigan, New York and Mississippi. Additionally, the Kousser-Mullin study reports such a case in a 1993 California mail-only special election, “when a voter who appeared in registration rolls under two names because of a change in marital status cast and returned both ballots.”

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cc: Elections Task Force Members